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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Steven Ray Newell,
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10 Petitioner,
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12 v.
13 Charles L. Ryan, et al.,
14 Respondents.

No. CV12-02038-PHX-DGC

DEATH PENALTY CASE

**ORDER DENYING MOTION
TO REMAND**

15 Before the Court is Petitioner's Motion to Remand to Maricopa County Superior
16 Court for Reconstruction of the Record and Motion to Stay until Reconstruction of the
17 Record is Complete. Doc. 39. Respondents oppose the motion, which is fully briefed.
18 Docs. 40, 41. For the reasons set forth herein, the motion is denied without prejudice.

19 Petitioner requests a remand to state court so that he may seek reconstruction of
20 (1) the excerpts of his recorded statements to police actually played to the jury but not
21 transcribed by the court reporter, and (2) numerous untranscribed bench conferences. He
22 asserts generally that these items are necessary for resolution of his habeas claims, but
23 does not explicitly identify the relevant claims or explain with any specificity why the
24 additional portions of the record are needed to evaluate them.

25 The Court has reviewed the petition and observes that Claims 6 and 7 allege
26 ineffective assistance of trial and appellate counsel with regard to record issues.
27 However, because Respondents have yet to file their Answer to the habeas petition, and
28 the Court has yet to receive the state court record, the Court is unable to determine
whether the requested items are necessary for meaningful consideration of Petitioner's

1 claims. Rule 5(c) of the Rules Governing Section 2254 Cases requires Respondents to
2 indicate in their Answer what transcripts are available, when they can be furnished, and
3 whether proceedings have been recorded but not transcribed.¹ In addition, if it appears
4 that omitted parts of the record are necessary for resolution of Petitioner's claims, Rule
5 5(c) provides that the Court may order Respondents to either furnish the untranscribed
6 recordings or submit a narrative summary of the evidence if no transcript is available.
7 For these reasons, the Court finds the instant motion premature.

8 **IT IS ORDERED** that Petitioner's Motion to Remand to Maricopa County
9 Superior Court for Reconstruction of the Record and Motion to Stay until Reconstruction
10 of the Record is Complete (Doc. 39) is **DENIED WITHOUT PREJUDICE**.

11 Dated this 19th day of August, 2013.

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16 David G. Campbell
17 United States District Judge
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27 ¹ The Court notes that pursuant to the Order of Appointment and General
28 Procedures entered October 4, 2012, Respondents were relieved of their obligation under
Rule 5(c) to furnish trial transcripts because the Arizona Supreme Court routinely
provides transcripts in capital cases to this Court. However, it is incumbent upon
Respondents to ensure that the transcripts provided by the Arizona Supreme Court
include all those that are available and relevant to these federal habeas proceedings.